IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1738 OF 2003

LEENA N. PAREKH)
of Mumbai, Indian Inhabitant)
presently residing at Flat No.)
B-45, Sealord Apartments, Cuffe)
Parade, Mumbai 400 005 and)
having her permanent address at)
Flat No.H/21, Maker Towers,)
Cuffe Parade, Mumbai-400 005.)... Petitioner

Versus

1. ENFORCEMENT DIRECTORATE)
(Foreign Exchange Regulation)
Act), through the Office)
of the Special Directorate,)
having their office at)
Janmabhoomi Chambers, 1st)
floor, Walchand Hirachand)
Marg, Mumbai 400 001.)

2. INDIAN OVERSEAS BANK)
having one of its Branch)
Office at 2/10, Elphistone)
Building, Veer Nariman Road)
Fort, Mumbai 400 001.)

3. State of Maharashtra)

3A. Union of India)... Respondents

Mr.Nitin Pareikh for petitioner

Mr.D.N.Salvi for Respondent No.1, 3A

Mr.D.S.Mhaispurkar, APP for State

Ms Rupali Bhosale i/b M/s.M.S.Bodhanwala & Co. for

Respondent No.2

CORAM : R.M.S.KHANDEPARKAR &
P.V.KAKADE, JJ.
DATE : 28TH FEBRUARY, 2005.

ORAL JUDGMENT : (Per Khandeparkar, J.)

1. Heard.

2. Rule. By consent the rule is made returnable forthwith.

3. The Petitioner by the present Petition seeks direction for release of the Bank Guarantee executed in January 2000 as well as refund of the sum of Rs.40,100/= by the Respondent Nos.1 and 3 and further release of sum of Rs.1,09,847/= in terms of interim order which was passed by this Court in Writ Petition No.377 of 1999 pursuant to which the said Bank Guarantee was executed by the Petitioner.

4. Few facts relevant for the decision are that the

adjudication proceedings initiated against the Petitioner under Foreign Exchange Regulation Act, 1973 were not being disposed of expeditiously and therefore, the Petitioner filed Criminal Writ Petition No.377 of 1999 wherein an interim order dated 22.12.1999 came to be passed to the effect that the Respondent no.1 herein was directed to release in favour of the Petitioner sum of Rs.1,09,847/= subject to the petitioner furnishing bank guarantee of a nationalised bank in favour of Respondent no.1. The petitioner, accordingly executed bank guarantee on 12.12.2000 and the said amount was deposited by the Respondent No.1 with the Respondent No.2 to the credit of the petitioner but returned by the Respondent no.2 on account of furnishing of the said bank guarantee. Since adjudication proceedings were subsequently disposed of by the Competent Authority, the Writ Petition No.377 of 1999 came to be disposed of on 3.4.2000. In the adjudication proceedings certain penalty was levied upon the Petitioner and therefore the matter was carried in appeal by the petitioner. During the pendency of the said appeal the order imposing penalty was stayed by the Appellate Authority by its order dated 29.5.2000 and finally the said appeal was allowed and order imposing penalty was quashed and set

aside by the order dated 5.5.2004. Meanwhile the petitioner also deposited with the Respondent No.1 sum of Rs.40,100/= as was required to be deposited in accordance with the provisions of law. However, pursuant to the disposal of the appeal by the order dated 5.5.2004, the petitioner requested the respondents to release the bank guarantee and refund the sum of Rs.40,100/=. The Respondents while refusing to release the bank guarantee as also to refund amount, further directed the respondent no.2 not to release the amount of Rs.1,09,847/= which was deposited equivalent to the bank guarantee which was furnished by the respondent no.2 for the petitioner. One of the applications under which the Petitioner requested the respondents to release the bank guarantee and to repay the amount was dated 1.8.2003. Since the respondent refused to comply with the request, the Petitioner filed the present petition on 28.11.2003.

5. It is the contention of the petitioner that the respondents have no justifiable cause to refuse the release of the bank guarantee or refund of the said amount consequent to setting aside the penalty which was imposed by the adjudicating authority. On the other

hand the learned advocate for the respondent submitted that the respondent nos.1 and 2 have filed appeal before this Court and the same was filed in September, 2003, however, since the Bench was not available in the last week, the matter could not be taken up for hearing.

6. The learned advocate for the respondent has candidly admitted that though the appeal was filed in this Court in September, 2003 and it was mentioned for urgent circulation before the learned Single Judge on 23.1.2004, however, since the matter required to be dealt with by the Division Bench, the learned Single Judge could not issue any order in the said Appeal. He has also admitted that after 23.1.2004 matter was never circulated before any Division Bench. Admittedly there was also office objections which were removed as late as in June 2004. But even thereafter no efforts were made to circulate the appeal or to move for any interim order in the said matter. The said appeal was filed in September 2003, however, the same is neither admitted nor any interim order has been passed in the said appeal. In these circumstances therefore the order passed by the Lower Appellate Authority stands. Consequently the petitioner has no liability towards the

Respondent No.1 so as to insist for continuation of the bank guarantee or refusal to refund the amount of Rs.40,100/= or even to direct the Respondent No.2 to withhold the amount of Rs.1,09,847/= which admittedly belongs to the Petitioner. In the circumstances therefore, there is no justification for the respondents to refuse the release the bank guarantee or to pay the said amount. For the reasons stated above, therefore, the petition is to be allowed as prayed for.

7. As regards the grievance regarding the criminal complaint stated to have been filed by the Respondent no.1, the petitioner has not placed on record any copy of the said complaint so as to know the cause for filing of the complaint. While it is sought to be contended on behalf of the petitioner that the complaint relates to the failure on the part of the petitioner to pay the amount of penalty, it is argued on behalf of the respondents that the same relates to the offence committed by the petitioner on account of violation of FERA regulations. In the absence of copy of the complaint on record, we are handicapped to know the nature of the complaint and therefore, the grievance made by the petitioner in the present petition cannot be

considered at all. We make it clear that we have not expressed any opinion on the complaint filed by the respondents against the petitioner. In the absence of necessary materials on record, while leaving the said issue open, the present petition is hereby disposed of. Needless to say that in case the complaint relates merely to the penalty amount, certainly such a complaint could not be maintainable in view of the order of the appellate authority quashing the penalty.

8. The Petition therefore succeeds. The Respondent No.1 is directed to release the bank guarantee and to repay the sum of Rs.40,100/= within a period of four weeks from today. The respondent no.2 is directed to release the amount of Rs.1,09,847/= in favour of the petitioner forthwith. Rule is made absolute accordingly with no order as to costs.

(R.M.S.Khandeparkar, J.)

(P.V.Kakade, J.)

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